

## **REMARKS**

Applicants reply to the final Office Action dated March 25, 2010, within three months. Applicants also file an RCE. Claims 1-2 were pending in the application, and the Examiner rejects claims 1-2. Applicants add new claims 3 and 4. Support for the amendments and new claims may be found in the originally-filed specification, claims, and figures. No new matter has been introduced by the amendments and new claims. Reconsideration of this application is respectfully requested.

The Examiner rejects claim 1 under 35 USC 102(b) as being anticipated by Yoshida et al., U.S. Publication No. 2005/0083814 A1 ("Yoshida"). Applicants respectfully disagree with these rejections, but Applicants amend certain claims (without prejudice or disclaimer) in order to clarify the patentable aspects of certain claims and to expedite prosecution.

Applicants amend claim 1 to recite "controlling the recording/reproduction section to record the second data portion temporally before recording the first data portion" (emphasis added). This amendment is supported by the disclosure of at least "Embodiment 7" of the specification, particularly paragraphs [0804]-[0816] of the published application.

Paragraph [0804] discloses the recording/recording section 314 being controlled to record the second section "before" "recording" (i.e., the present-continuous form of the verb "to record") the first section. Applicants strongly assert that it is therefore unambiguously derivable from at least the temporally distinct verb tenses "record" and "recording" that these acts are temporally distinct, and that "before" indicates the order in which the acts are performed.

Paragraphs [0811]-[0813] similarly disclose the recording of data "E2" (i.e., the second data portion) "and then" (i.e., after the recording of E2 has been completed) the recording of data "D2" (i.e., the first data portion). Applicants strongly assert that it is therefore also clearly and unambiguously derivable from at least the disclosure of paragraphs [0811]-[0813] that what is referred to are two temporally distinct acts (i.e., recording of the second portion and recording of the first portion) where the first act is carried out "and then" the second act is carried out. Paragraph [0816] also discloses that this recording is carried out "by controlling the order of recording data" - that is, the temporal sequence in which distinct acts of recording take place.

Yoshida discloses in, for example, paragraph [0080] and Fig. 4, the recording of the second data portion **spatially** before the first data portion. However, Applicants assert that

Yoshida does not reasonably disclose the recording of the second data portion **temporally** before the first data portion. Applicants assert that the amendment to claim 1 further distinguishes claim 1 from Yoshida by including the limitation of the recording of the second data portion occurring temporally before, not spatially before the recording of the first data portion.

As is described in paragraph [0816] of the published application, this sequential recording achieves the significant result of reducing a range of replacement recording, while also reducing the replacement management information. Applicants assert that such an advantage is not achieved by Yoshida, which does not teach recording the "user data portion" (which the Examiner asserts corresponds to the "second data portion" of claim 1) prior to the "spare area" (which the Examiner asserts corresponds to the "first data portion" of Claim 1). Without performing the second data portion recording temporally before the first data portion recording, unnecessary replacement recording is not avoided. As such, Applicants assert the claim 1 is patentably distinct from Yoshida.

The Examiner next rejects claim 2 under 35 USC 103(a) as being unpatentable over Yoshida in view of Park et al, US Publication No. 2004/0076049 ("Park"). Applicants respectfully disagree with these rejections, but Applicants amend certain claims (without prejudice or disclaimer) in order to clarify the patentable aspects of certain claims and to expedite prosecution.

Claim 2 as amended recites at least the technical features of " . . . determining a specific location in the user data area where access time from the recording location of the replacement cluster is less than or equal to a predetermined time as a recording location at which the data is to be recorded; controlling the recording/reproduction section to record the data at the determined recording location" (emphasis added). Such amendments are supported by at least the disclosure of paragraph [0876] of the published application.

The Examiner asserts that Park in Fig. 5 discloses the recording of data at a location "close" to the recording location of a replacement cluster. As the Examiner notes on page 5, paragraph 3 of the Office Action, "'close' is a relative term", that is to say, it is open to arbitrary interpretations including, as the Examiner apparently asserts, the unspecified distance between Cluster #2 and DFL #1.

As is described in at least "Embodiment 9" and particularly paragraph [0880] of published application, such feature is one of the key aspects of the claimed invention. As such, Applicants

amend claim 2 to clarify the meaning of "close" in order to further distinguish the claimed invention from the disclosure of Park. Applicants assert that amended claim 2 addresses the subject rejection in its recitation of the data recording location being a location where access time is less than or equal to a desirable predetermined amount, rather than an arbitrary 'close' location.

In contrast, Park (in at least Fig. 5) discloses only the recording of data at an arbitrary location in the Data Area - DFL#1 (32). Applicants assert that DFL#1 (32) is not 'close' to Cluster #2 according to the recitation of claim 2. In fact, Park at paragraph [0044] recites that DFL#2 (32) is an area following the last DVU of Recording 1. Rather than being 'close' to the replacement cluster recording location, Applicants strongly assert that it is at a distance and access time determined by length of Recording 1 - which could be any conceivable distance/time determined by the recording process.

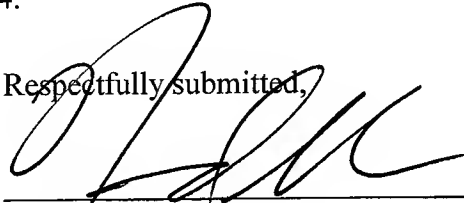
As is described in, for example, paragraph [0880] of the published application, the drive apparatus of claim 2 enjoys significant advantages over the prior art, including higher-speed replacement recording and improved access performance of the information recording medium. Applicants assert that Park, on the other hand, cannot achieve this effect as it discloses only the writing of Defect List information (which contains the recorded data) at a location following that of the original recording. As such, Applicants assert that claim 2 is patentably distinct from Yoshida, Park, or any combination thereof.

Applicants assert that new claim 3 (dependent from Claim 2) describes a narrower embodiment in which the recording location at which the data is to be recorded is **adjacent to** the recording location of the replacement cluster. Claim 2 finds support in at least paragraph [0876] of the published application. Moreover, because claim 3 depends from claim 2, Applicants assert that claim 3 is differentiated from the cited references for the same reasons as set forth above, in addition to its own unique features.

New independent claim 4 recites the method carried out by the apparatus of claim 2. Claim 4 finds support in at least the disclosure of paragraphs [0865]-[0890] of the published application. Because claim 4 recites the method carried out by the apparatus of claim 2, Applicants assert that claim 4 is differentiated from the cited references for the same reasons as set forth above, in addition to its own unique features.

In view of the above remarks, Applicants respectfully submit that all pending claims properly set forth that which Applicants regard as their invention and are allowable over the cited references. Accordingly, Applicants respectfully request allowance of the pending claims. The Examiner is invited to telephone the undersigned at the Examiner's convenience, if that would help further prosecution of the subject application. The Commissioner is authorized to charge any fees due to Deposit Account No. 19-2814.

Respectfully submitted,



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